SINGLE BENCH

(6)

CF1002

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

W.P. (S) No.6919 / 2006

Petitioner : Rajendra Prasad Tripathi, s/o Shri K.P. Tripathi, aged about 39 years, Assistant Grade II, Mantralaya, Water Resources Department, Government of Chhattisgarh, Raipur, [C.G.]

P.R. No. 6648/05 Kumar Das
Presented on dated 22-11-06

Versus

Respondents : 1) State of Chhattisgarh through the Secretary General Administration Department, Mantralay, DKS Bhawan Raipur, [C.G.]

WRIT PETITION UNDER ARTICLE 226/ OF THE CONSTITUTION OF INDIA

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133

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION (S.) NO.6919 OF 2006

Rajendra Prasad Tripathi

versus

State of Chhattisgarh

ORDER

Post for 27-2-2007

Sd/-
Satish K. Agnihotri
Judge

(134)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION (S.) NO.6919 OF 2006

Petitioner : Rajendra Prasad Tripathi

versus

Respondent : State of Chhattisgarh

Present : Mr. P.K.Bhaduri, counsel for the petitioner.
Mr. Satish Gupta, Deputy Government Advocate for the State/respondent.

ORDER

(Passed on 27th Day of February, 2007)

The petitioner was initially appointed as Lower Division Clerk and Typist on *ad hoc* basis at fixed salary of Rs.870/- per month in the office of the respondent vide order dated 10-8-1988 (P-1). Thereafter, an order dated 19-4-1989 (P-3) was passed, wherein it appears that the nature of the order was changed from *ad hoc* appointment to temporary appointment on the same fixed pay, i.e., Rs.870/- per month with allowances. In the order dated 19-4-1989 (P-3), the appointment of the petitioner on a regular pay of Rs.870/- per month on temporary basis was subject to certain conditions. One of the conditions was that during his probation period, the employee has to pass Shorthand and Typing Test from Madhya Pradesh Shorthand and Typing Examination Council and departmental Hindi Shorthand Test

(135)

through the Secretariat Examination. The employee would be entitled to lowest pay till he passes the above-stated examinations. It was next provided that the employee would be confirmed on completion of two years' training from the second day of passing the above-stated examinations. It was also provided that in the event, the employee fails to complete his probation within two years, his services can be terminated. The relevant terms and conditions of the appointment are as under :-

> "1/ उन्हें नियुक्ति की तारीख से दो वर्ष की अवधि में मध्यप्रदेश शीघ्रलेखन तथा मुद्रलेखन परीक्षा परिषद की तथा सचिवालय की विभागीय हिन्दी मुद्रलेखन की परीक्षाएं उत्तीर्ण करना होगी । इस अवधि में जब तक वे उक्त परीक्षाएं उत्तीर्ण नहीं करेंगे तब तक उन्हें निम्न श्रेणी लिपिक एवं मुद्रलेखक के पद के वेतनमान का निम्नतम वेतन तथा उस पर मिलने वाले अन्य भत्ते मिलेंगे ।
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> 2/ यदि वे निर्धारित अवधि में उपर्युक्त प्रकार की हिन्दी मुद्रलेखन की परीक्षाएं उत्तीर्ण कर लेंगे तो उन्हें परीक्षा उत्तीर्ण करने के दूसरे दिन से निम्न श्रेणी लिपिक एवं मुद्रलेखक के पद पर दो वर्ष की परिवीक्षा पर नियुक्त किया जावेगा ।
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> 3/ यदि वह उपर्युक्त परीक्षाएं निर्धारित अवधि में उत्तीर्ण नहीं करेंगे तो उनकी सेवाएं नियुक्ति की दिनांक से दो वर्ष पूर्ण होने पर बिना किसी औपचारिक आदेश के समाप्त हो जावेंगी ।"

2. According to the petitioner, the petitioner has passed Hindi Typing Examination conducted by the Shorthand and Typing Examination Council, Government of Madhya Pradesh in the year 1994 vide certificate dated 28-10-1994 (P-4), it appears that after about five

years. The petitioner passed departmental Typing Examination also in the year 1997. Thereafter, the petitioner was granted regular pay-scale of Rs.950-1530, vide order dated 15-12-1997 (P-5) with effect from 4-12-1997. According to the learned counsel appearing for the petitioner, the petitioner completed his probation on 15-7-1999. On completing the period of probation by the petitioner, a certificate dated 30-9-2000 (P-6) was issued to the effect that as soon as vacant permanent post will be available, the services of the petitioner will be confirmed.

3. The petitioner approached this Court by a writ petition, being Writ Petition No.3196 of 2006, for similar relief as sought for in this petition. This Court, vide order dated 21-7-2006 (P-10), without expressing any opinion on the merit, directed the petitioner to make a detailed representation to the concerned authorities and the concerned authorities were accordingly directed to decide the said representation within a period of three months from the date of receipt of the representation in accordance with law. The State Government, vide letter dated 26-10-2006 (P-12), decided the representation of the petitioner and rejected the same after giving detailed reasons. In the said decision, it was clearly stated that the petitioner has passed Hindi Typing Examination through the Council on 17-7-1994 and Hindi Typing by Departmental Examination in December, 1997. Accordingly, the petitioner was granted regular pay-scale with effect from 4-12-1997. Since the petitioner could not pass the required test within the probation period of two years, the petitioner was granted seniority and benefit of pay-scale with effect from 4-12-1997 after he passed Hindi Typing Test in the Departmental Examination, 1997. Accordingly, it was held that the demand of the petitioner to grant seniority with effect from 9-5-1988

is without any basis. The letter dated 26-10-2006 (P-12), rejecting the representation of the petitioner was further based on Rule 6(2) of the Chhattisgarh Public Services (Promotion) Rules, 2003 (henceforth 'the Rules, 2003'), which reads as under :-

> "**6. Promotion on the basis of seniority subject to fitness.** – (1) xxx xxx xxx
>
> (2) The names of only such public servant shall be considered for promotion, who have completed the prescribed qualifying service in their feeder cadre/part of the service/pay scale of post according to the Recruitment Rules. It is, however, not necessary to consider all the names of public servant who have completed the prescribed minimum length of service but only such number of cases of public servant shall be considered according to the seniority, which shall be sufficient to cover the number of exiting and anticipated vacancies due to retirement during the year under each category. In addition to this, with a view of inclusion, in the select list, the names of two public servants or 25 percent of the number of the public servants included in select list whichever is more, the names of the required number of the public servants shall be considered for each category to fill up the unforeseen vacancies occurring during the course of the aforesaid period.
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> **Explanation.** – Manner of computation for eligibility for promotion. – Period of qualifying service on 1st January of the relevant year in which Departmental Promotion Committee is convened shall be counted from the calendar year in which the public servant has joined the feeding

(130)

cadre/part of the service/pay scale of the post and not from the date of joining of the cadre/part of the service/pay scale of post."

4. Reliance of learned counsel appearing for the petitioner on the Secretariat Service Recruitment Rules, 1976 is not applicable to the facts of the present case, as there is no provision for determination of seniority in the said rules. The learned counsel has not pointed out any rules which govern fixation of seniority of the employees of the Secretariat. Thus, fixation of the seniority of the petitioner shall be governed by the terms and conditions of the appointment.

5. On perusal of the appointment order dated 19-4-1989 (P-3), it is clear that the petitioner would be entitled to regular pay-scale and allowances after passing the required test of Hindi Typing (supra). Thus, grant of regular pay-scale after passing the test with effect from 4-12-1997 is just and proper. The Government, while rejecting the representation of the petitioner vide letter dated 26-10-2006 (P-12), has considered all the facts of the case as well as law applicable to the facts of the case. There is no infirmity in the said decision.

6. It is well settled that if an employee passes required test within the probation period, the seniority has to be reckoned from the date of initial appointment. Otherwise, the seniority should be reckoned from the date of confirmation. In the facts of the present case, the petitioner could not pass the required test within the prescribed period of two years of probation from the date of his appointment, i.e., 19-4-

1989. Thus, the petitioner cannot claim seniority from the date of initial appointment.

7. The Hon'ble Supreme Court, in the case of ***Mahesh Kumar Agal*** vs. ***Director General of Police and another***[1], held as under :-

> "2. Passing the Hindi test is a condition for promotion and since the appellant had passed the test on 20-9-1981, he was given promotion and seniority was fixed with effect from the passing of the said test. Under these circumstances, we do not find any illegality in the order passed by the tribunal warranting interference."

8. The Hon'ble Supreme Court, in the case of ***M.P. Chandoria*** vs. ***State of M.P. and others***[2], held as under :-

> "5. ..... In view of the admitted position that he did not pass the test, the appointing authority considered that his seniority would be counted w.e.f. the date of his passing the test. Rule 12(a)(ii) clearly empowers the appointing authority to assign, in these circumstances, the seniority in lower level than the one assigned by the Public Service Commission. We do not find any illegality committed by the authorities in giving seniority from the date of his passing the test."

9. The above view has been later on approved by the Supreme Court in the case of ***State of M.P.*** vs. ***Ramkinkar Gupta and***

(190)

others[3], and also in the case of *Om Prakash Shrivastava* vs. *State of M.P. and another*[4].

10. For the reasons stated hereinabove, the writ petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

27-2-2007

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1 (1996) 2 SCC 70
2 (1996) 11 SCC 173
3 (2000) 10 SCC 77
4 (2005) 11 SCC 488

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